



NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Part 1170

Nondiscrimination on the Basis of Disability in Federally Assisted Programs or Activities

AGENCY: National Endowment for the Humanities; National Foundation on the Arts and the Humanities.

ACTION: Notification of interpretation.

SUMMARY: The National Endowment for the Humanities (NEH) provides notice of its interpretation of Section 504 of the Rehabilitation Act of 1973 and NEH's implementing regulations, which prohibit discrimination on the basis of disability in federally assisted programs and activities. (In order to reflect currently accepted terminology, this notice uses the term "disability" rather than "handicap," which appears in NEH's Section 504 regulations. There is no substantive legal difference between the two terms for purposes of this notice.) This document clarifies that NEH interprets its Section 504 rule to permit recipients of Federal financial assistance from NEH who engage in the design, construction, or alteration of facilities to use the 2010 ADA Standards for Accessible Design (2010 Standards) in lieu of the Uniform Federal Accessibility Standards (UFAS). This notice does not require recipients to use the 2010 Standards.

DATES: This interpretation is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Deputy General Counsel, Office of the General Counsel, National Endowment for the Humanities, 400 7th Street, SW, Room 4060, Washington, DC 20506; (202) 606-8322; gencounsel@neh.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 504 of the Rehabilitation Act of 1973 (Section 504)¹ prohibits, among other things, discrimination on the basis of disability in federally assisted programs or activities. NEH adopted a rule, codified at 45 CFR part 1170, to implement this prohibition for each recipient of Federal financial assistance from NEH and each program or activity that receives such assistance (the Section 504 rule).

Section 1170.33(a) of the Section 504 rule imposes a requirement with respect to the design and construction of facilities. New facilities must be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities must, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

Section 1170.33(b)(1) of the Section 504 rule provides further that, effective as of January 18, 1991, NEH shall deem the design, construction, or alteration of buildings in conformance with sections 3–8 of the Uniform Federal Accessibility Standards (UFAS)² to comply with § 1170.33(a).³

On September 15, 2010, the Department of Justice adopted new accessibility standards under the Americans with Disabilities Act of 1990 (ADA) for the design, construction, and alteration of state and local government facilities, places of public accommodation, and commercial facilities, called the 2010 ADA Standards for

¹ 29 U.S.C. 794.

² 41 CFR Appendix A to Subpart 101-19.6 (2001), *available at* <https://www.govinfo.gov/app/details/CFR-2001-title41-vol2/CFR-2001-title41-vol2-part101-id389-subpart101-id424-appA>.

³ 45 CFR 1170.33(a).

Accessible Design (the 2010 Standards).⁴ Covered entities under the ADA must comply with the 2010 Standards for new construction or alterations that commence on or after March 15, 2012.⁵

NEH routinely provides Federal financial assistance to state and local governments and entities that operate places of public accommodation and/or commercial facilities, within the meaning of the Americans with Disabilities Act of 1990, to support the design, construction, or alteration of facilities. In those cases, the recipient of Federal financial assistance must comply with the 2010 Standards pursuant to the ADA, but must also comply with UFAS to gain the benefit of the provisions of § 1170.33(b)(1) of the Section 504 rule. These duplicative requirements impose an unnecessary administrative burden on recipients without providing any benefit to individuals with disabilities.

In March 2011, pursuant to its authority to coordinate the implementation and enforcement of Section 504,⁶ the Department of Justice advised Federal agencies that, until such time as they update their regulations implementing the Federally assisted provisions of Section 504, they may issue guidance to covered entities that permits them to use the 2010 Standards as an acceptable alternative to UFAS for new construction and alterations.⁷

II. Notice of interpretation

⁴ 75 FR 56236; 75 FR 56163.

⁵ 28 CFR 35.151(c)(3), 36.406(a)(3).

⁶ Executive Order 12250.

⁷ Memorandum from Thomas E. Perez, Assistant Attorney General, Division of Civil Rights, Department of Justice, to Federal Agency Civil Rights Directors and General Counsels (March 29, 2011), *available at* <https://www.justice.gov/file/1464186/download> (the 2011 Memorandum).

Consistent with the foregoing guidance, this notification clarifies that NEH deems compliance with the 2010 Standards to be an acceptable means of complying with the accessibility requirements for new construction and alterations set forth in the Section 504 rule. Specifically, NEH interprets the requirement of § 1170.33(a) of the Section 504 rule, that covered facilities shall be “designed and constructed to be readily accessible to and usable by handicapped persons,” to permit the design, construction, or alteration of buildings in conformance with the 2010 Standards. Once a covered entity selects an applicable accessibility standard for new construction or alterations under Section 504, that standard must be applied to the entire facility.

Nothing in this document requires the design, construction, or alteration of buildings to conform with the 2010 Standards or alters NEH’s interpretation of § 1170.33(b).

Dated: June 9, 2022.

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National Endowment for the Humanities

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